

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 01-455-A
)	Judge Leonie M. Brinkema
ZACARIAS MOUSSAOUI)	

**DEFENDANT’S RESPONSE TO THE GOVERNMENT’S SUPPLEMENTAL MOTION
REGARDING MENTAL HEALTH EVIDENCE**

On July 6, 2004, the Government filed a Supplemental Motion and Incorporated Memorandum Regarding Mental Health Evidence (the “Government’s Motion”) (dkt. no. 1176). For the following reasons, Defendant, through counsel, respectfully requests that the Court defer addressing this Motion until after return of the mandate from the Court of Appeals.¹

By Order dated November 5, 2003 (dkt. no. 1111), in order to “conserve resources of both the prosecutors and [defense] counsel,” the Court stayed “all further action in this case at the district court level.” Order at 2. The Court reminded the parties of this stay in open court on June 10, 2004 at the conclusion of the deposition of Hussein al-Attas.

Consistent with the Court’s Order, since November 5, 2003, with two

¹ Pursuant to Rule 41(d)(1) of the Federal Rules of Appellate Procedure, the mandate has been stayed pending disposition of defendant’s Petition for Rehearing or Rehearing En Banc, which was filed with the Court of Appeals on May 6, 2004, and which is still pending. See May 6, 2004 letter to the U.S. District Court from the Clerk of the Court of Appeals (dkt. no. 1162). On May 13, 2004, the Court of Appeals ordered the Government to respond to that petition and to answer certain questions. The Government did so on May 19, 2004 and the defense replied to the Government’s response on May 24, 2004. Thereafter, on June 3, 2004, the Court of Appeals heard oral argument on the above pleadings (in a closed/classified session).

exceptions,² Defendant's counsel (including CJA counsel) have not filed any written motions with the Court and have significantly curtailed, and in many instances ceased work altogether on, its work on the district court aspects of this case.³ In addition, the Government's Motion does not require prompt resolution, or indeed any resolution before the return of the mandate.

Given the foregoing, and considering that the Defendant has substantive objections to the Government's Motion which will require research and briefing, the prudent course is to stay consideration of the Motion until after return of the mandate in this case. If the Court believes that a stay is not appropriate, then Defendant respectfully requests ten (10) calendar days from the denial of same to file his substantive objections to the Government's Motion.

Respectfully submitted,

ZACARIAS MOUSSAOUI
By Counsel

² The two exceptions are: (1) Motion for Protection of Defendant's Papers (filed Nov. 25, 2003, dkt. no. 1125), which was necessitated by the Court's order of November 14, 2003 revoking Mr. Moussaoui's pro se status; and (2) *an ex parte* motion requesting the expenditure of CJA funds (filed Jan. 22, 2004, dkt. no. 1143), which was necessitated by pressing events detailed in the motion.

³ With respect to CJA counsel, they have been instructed to cease work altogether except upon express approval from the Court.

_____/S/
Frank W. Dunham, Jr.
Federal Public Defender
Gerald T. Zerk
Senior Assistant Federal Public Defender
Kenneth P. Troccoli
Anne M. Chapman
Assistant Federal Public Defenders
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

_____/S/
Edward B. MacMahon, Jr.
107 East Washington Street
P.O. Box 903
Middleburg, VA 20117
(540) 687-3902

_____/S/
Alan H. Yamamoto
643 South Washington Street
Alexandria, VA 22314
(703) 684-4700

CERTIFICATE OF SERVICE⁴

I HEREBY CERTIFY that on this 13th day of July 2004, a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David J. Novak and AUSA David Raskin, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, by placing a copy BY HAND in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia and by FACSIMILE upon same to 703-299-3982 (AUSA Spencer), 804-771-2316 (AUSA Novak) and 212-637-0099 (AUSA Raskin).

_____/S/
Kenneth P. Troccoli

⁴ Pursuant to the Court's order of October 3, 2002 (dkt. no. 594), the instant pleading was presented to the CSO for a classification review before filing. That review determined that the pleading is not classified. A copy of this pleading was not provided to Mr. Moussaoui until after completion of the classification review.